

**BEFORE THE
FEDERAL ELECTION COMMISSION**

Harry Sherr
10 Nathan Lord
Amherst, NH 03031

Complainant,

v.

Swift Boat Veterans for Truth
P.O. Box 26184
Alexandria, VA 22313;

Roy Hoffman
9030 Ivebridge Crossing
Richmond, VA 23236;

John O'Neill
1004 Kirby Drive
Houston, TX 77019;

Weymouth Symmes
2401 Brooks Street PMB 338
Missoula, MT 59801; and

Alvin A. Horne
2115 Briarglen Dr
Houston, TX 77027,

Respondents.

COMPLAINT

Complainant files this complaint against the Swift Boat Veterans For Truth; Roy Hoffman, Chairman; John O'Neill, Co-Chairman; Weymouth Symmes, Treasurer; and Alvin A. Horne, Secretary (collectively, "Respondents"), for violations of the electioneering communication provisions of the Federal Election Campaign Act and Federal Election Commission regulations, as described below.

MUR No. 5565

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COMMISSION
OFFICE OF GENERAL
COUNSEL

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The facts indicate that Respondents conspired to produce and air illegal corporate electioneering communications.

I. FACTS

Swift Boat Veterans for Truth ("SBVT") is organized under section 527 of the Internal Revenue Code. On April 30, 2004, SBVT filed Form 8871, "Notice of Section 527 Status," with the Internal Revenue Service. *See* Attachment A.

To date, SBVT has filed five notices of electioneering communications – FEC Form 9 – with the Federal Election Commission in the month of September 2004. On each one of these notices, under question six, SBVT has claimed to be a qualified nonprofit corporation under 11 C.F.R. § 114.10 (2004). *See* Attachment B.

II. LEGAL ARGUMENT

A. SBVT Has Made Electioneering Communications

An electioneering communication is defined as a "broadcast, cable, or satellite communication" that "refers to a clearly identified candidate for federal office," is made within "60 days before a general . . . election" and that "is targeted to the relevant electorate." 2 U.S.C. § 434(f)(3)(A)(i). The Commission's regulations further refine this definition; most importantly, the term "targeted to the relevant electorate" is defined as meaning that "the communication can be received by 50,000 or more persons" in the state the candidate seeks to represent, if a candidate is running for the United States Senate. 11 C.F.R. § 100.29(b)(5).

SBVT has reported millions of dollars' worth of disbursements for electioneering communications to the Commission on its Form 9 reports. There is no dispute that SBVT has engaged in electioneering communications on a massive and widespread scale.

B. SBVT is a Corporation

2 U.S.C. § 441b(a) forbids corporations from making "a contribution or expenditure in connection with any election at which . . . a Senator or Representative in . . . Congress are

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to be voted for." The statute defines "contribution or expenditure" to include electioneering communications. *See id.* § 441b(b)(2); *see also* 11 C.F.R. § 114.2(b)(2)(iii) (prohibiting corporations from "[m]aking payments for an electioneering communication to those outside the restricted class"). It is a core violation of federal election law for corporations to make electioneering communications.

The only corporations that may make electioneering communications are qualified nonprofit corporations. *See id.* § 114.10(d)(2). SBVT has claimed qualified nonprofit corporation status on every one of its Form 9 submissions to the Commission. Thus, there can be no question that SBVT is a corporation. SBVT is therefore guilty of illegal corporate electioneering communications unless it meets the criteria for a qualified nonprofit corporation.

C. SBVT is Not a Qualified Nonprofit Corporation

A qualified nonprofit corporation must be "described in 26 U.S.C. 501(c)(4)." 11 C.F.R. § 114.10(c)(5). SBVT is not described in 26 U.S.C. § 501(c)(4).

First, *SBVT has already filed with the Internal Revenue Service under section 527 of the Internal Revenue Code*. SBVT cannot now claim that it is also organized under section 501(c)(4). These provisions are mutually exclusive; one corporate entity cannot organize under both sections simultaneously.

Second, SBVT is not "primarily" engaged in promoting the common good and general welfare of the people of the community. *See* 26 CFR § 1.501(c)(4)-1(a)(2)(i) (2004); *see also* Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures, 60 Fed. Reg. 35,292, 35,301 (July 6, 1995). In addition to the fact that SBVT has done nothing but air political ads since its creation in April 2004, its notification to the IRS of section 527 status means that it has admitted that it is "organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for . . . the function of influencing or attempting to influence the

selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors." 26 U.S.C. § 527(e)(1-2). Both the Commission's regulations and the Supreme Court have made clear that a entity organized primarily for the purpose of influencing elections cannot be a qualified nonprofit corporation. See *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238 (1986).

III. REQUESTED ACTION

As we have shown, the respondents have violated the Federal Election Campaign Act. Accordingly, we request that they be enjoined from further violations, be required to repay their illegal contributions and be fined the maximum amount permitted by law.

Sincerely,

Harry Shaw

SUBSCRIBED AND SWORN to before me this 7 day of October, 2004.

[Signature]
Notary Public

My Commission Expires:

DAWN M. CONDRA, Notary Public
My Commission Expires December 22, 2005

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ATTACHMENT A

Form 8871
(Rev. July 2003)

Department of the Treasury
Internal Revenue Service

Political Organization Notice of Section 527 Status

OMB No. 1545-1697

Part I General Information

1 Name of organization

Swift Boat Veterans for Truth

Employer identification number

20 - 1041228

2 Mailing address (P O. box or number, street, and room or suite number)

P O Box 26184

City or town, state, and ZIP code

Alexandria, VA 22313

3 Check applicable box:

☒ Initial notice

☐ Amended notice

☐ Final notice

4a Date established

04/23/2004

4b Date of material change

04/23/2004

5 E-mail address of organization

no@email

6a Name of custodian of records

Weymouth D Symmes

Custodian's address

P O Box 26184

Alexandria, VA 22313

7a Name of contact person

Weymouth D Symmes

Contact person's address

P O Box 26184

Alexandria, VA 22313

8 Business address of organization (if different from mailing address shown above). Number, street, and room or suite number

P O Box 26184

City or town, state, and ZIP code

Alexandria, VA 22313

9a Election authority

NONE

9b Election authority identification number

Part II Notification of Claim of Exemption From Filing Certain Forms (see instructions)

10a Is this organization claiming exemption from filing Form 8872, Political Organization Report of Contributions and Expenditures, as a qualified state or local political organization? Yes ☐ No ☒

10b If 'Yes,' list the state where the organization files reports:

11 Is this organization claiming exemption from filing Form 990 (or 990-EZ), Return of Organization Exempt from Income Tax, as a caucus or associations of state or local officials? Yes ☐ No ☒

Part III Purpose

12 Describe the purpose of the organization

To engage in exempt function activity

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Part IV List of All Related Entities (see instructions)13 Check if the organization has no related entities. ☒

14a Name of related entity	14b Relationship	14c Address
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Part V List of All Officers, Directors, and Highly Compensated Employees (see instructions)

15a Name	15b Title	15c Address
Weymouth D Symmes	Treasurer	P O Box 26184 Alexandria, VA 22313
Alvin A Horne	Secretary	P O. Box 26184 Alexandria, VA 22313
John O'Neill	Co-Chairman	P O Box 26184 Alexandria, VA 22313
Admiral Roy Hoffman (Ret.)	Chairman	P O Box 26184 Alexandria, VA 22313

Under penalties of perjury, I declare that the organization named in Part I is to be treated as a tax-exempt organization described in section 527 of the Internal Revenue Code, and that I have examined this notice, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. I further declare that I am the official authorized to sign this report, and I am signing by entering my name below.

Weymouth D Symmes

04/30/2004

**Sign
Here**

Name of authorized official

Date

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ATTACHMENT B

25044111261

FEC FORM 9**24 HOUR NOTICE OF DISBURSEMENTS/OBLIGATIONS FOR
ELECTIONEERING COMMUNICATIONS**

SEP 10 P 2:12

1. Individual, Organization or Qualified Nonprofit Corporation Making the Disbursement/Obligations

(a) Name

Swift Boat Veterans for Truth

(b) Address (number and street) ☐ Check if different than previously reported

P.O. Box 26184

2. FEC Identification Number

(c) City, State and ZIP Code

Alexandria VA 22313

C

(d) Name of Employer or Principal Place of Business

(e) Occupation

3. Is This Statement	<input checked="" type="checkbox"/> New	4. Covering Period	04	23	2004
	or		through		
	Amended		09	09	2004

5. (a) Date of Public Distribution(s) 09 10 2004 (b) Communication Title Medals

6. Is the Filer a Qualified Nonprofit Corporation under 11 CFR 114.10? ☒ Yes ☐ No7. Were the disbursements for the electioneering communication made exclusively from donations to a segregated bank account? ☒ Yes ☐ No**8. Custodian of Records**

(a) Name

Weymouth D. Symmes

(b) Address (number and street)

P.O. Box 26184

(c) City, State and ZIP Code

Alexandria VA 22313

(d) Name of Employer or Principal Place of Business

(e) Occupation

Retired

Retired

9. Total Donations This Statement 1 0 0 7 7 8 5 0 0

10. Total Disbursements/Obligations This Statement 7 0 2 3 1 2 0 0

Under penalty of perjury, I certify that this statement is true, correct and complete. In addition, if the electioneering communications reported herein were made by a corporation, I certify that the corporation is a qualified nonprofit corporation under the Commission's regulations.

TYPE OR PRINT NAME OF PERSON COMPLETING FORM

Weymouth D. Symmes

SIGNATURE

DATE

9/10/2004

NOTE: Submission of false, deceptive or incomplete information may subject the person signing this statement to the penalties of 18 U.S.C. § 4937c

FEC FORM 9

24 HOUR NOTICE OF DISBURSEMENTS/OBLIGATIONS FOR
ELECTIONEERING COMMUNICATIONS

SEP 17 P 2:17

1. Individual, Organization or Qualified Nonprofit Corporation Making the Disbursement/Obligations

(a) Name Swift Hoat Veterans for Truth(b) Address (number and street) ☐ check if different than previously reported
P.O. Box 26184

(c) City, State and ZIP Code

Alexandria VA 22313

(d) Name of Employer or Principal Place of Business

(e) Occupation

2. FEC Identification Number

C3. Is This Statement ☒ New
or
☐ Amended

4. Covering Period

0	9	1	0	2	0	0	4	
				through				
0	9	1	6	2	0	0	4	

5. (a) Date of Public Distribution(s) 0 9 1 7 2 0 0 4 (b) Communication Title Peace and Confusion

6. Is the Filer a Qualified Nonprofit Corporation under 11 CFR 114.10?

Yes ☒ No ☐

7. Were the disbursements for the electioneering communication made exclusively from donations to a segregated bank account?

Yes ☒ No ☐

8. Custodian of Records

(a) Name Weymouth D. Symmes

(b) Address (number and street)

P.O. Box 26184

(c) City, State and ZIP Code

Alexandria VA 22313

(d) Name of Employer or Principal Place of Business

(e) Occupation

RetiredRetired

9. Total Donations This Statement

37,943.50 0.00

10. Total Disbursements/Obligations This Statement

3,262.10 0.00

Under penalty of perjury, I certify that this statement is true, correct and complete. In addition, if the electioneering communications reported herein were made by a corporation, I certify that the corporation is a qualified nonprofit corporation under the Commission's regulations.

TYPE OR PRINT NAME OF PERSON COMPLETING FORM

Weymouth D. Symmes

SIGNATURE

Weymouth D. Symmes

DATE

9/17/04

NOTE: Submission of false, erroneous or incomplete information may subject the person signing this statement to the penalties of 18 U.S.C. 563.

FEC FORM 9

24 HOUR NOTICE OF DISBURSEMENTS/OBLIGATIONS FOR
ELECTIONEERING COMMUNICATIONS

SEP 22 P 2:37

1. Individual, Organization or Qualified Nonprofit Corporation Making the Disbursement/Obligations

(a) Name Swift Boat Veterans for Truth(b) Address (number and street) ☐ check if differs from previously reportedP.O. Box 26184

2. FEC Identification Number

C

(c) City, State and ZIP Code

Alexandria VA 22313

(d) Name of Employer or Principal Place of Business

(e) Occupation

3. Is This Statement
of ☒ New
Amended

4. Covering Period

09 17 2004

through

09 21 20045. (a) Date of Public Distribution(s) 09 22 2004 (b) Communication Title Friends

6. Is the Filer a Qualified Nonprofit Corporation under 11 CFR 114.107?

Yes ☒ No7. Were the disbursements for the electioneering communication made exclusively
from donations to a segregated bank account?Yes ☒ No

8. Custodian of Records

(a) Name Weymouth D. Symmes

(b) Address (number and street)

P.O. Box 26184

(c) City, State and ZIP Code

Alexandria VA 22313

(d) Name of Employer or Principal Place of Business

(e) Occupation

RetiredRetired

9. Total Donations This Statement

13415.000

10. Total Disbursements/Obligations This Statement

119371.600

Under penalty of perjury, I certify that this statement is true, correct and complete. In addition, if the electioneering
communications reported herein were made by a corporation, I certify that the corporation is a qualified nonprofit corporation
under the Commission's regulations.

TYPE OR PRINT NAME OF PERSON COMPLETING FORM

Weymouth D. Symmes

SIGNATURE

Weymouth D. SymmesDATE 9/22/04

NOTE: Submission of this document is not complete until the person signing this statement is in the possession of a U.S.G. 94173.

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FEC FORM 9

24 HOUR NOTICE OF DISBURSEMENTS/OBLIGATIONS FOR
ELECTIONEERING COMMUNICATIONS

SEP 10 14 36

1. Individual, Organization or Qualified Nonprofit Corporation Making the Disbursement/Obligations

(a) Name

Swift Boat Vets and POWs for Truth

(b) Address (number and street) ☐ check if different than previously reported

P.O. Box 26184

(c) City, State and ZIP Code

Alexandria VA 22314

(d) Name of Employer or Principal Place of Business

(e) Occupation

2. FEC Identification Number

C

3. Is This Statement

X New

or

Amended

4. Covering Period

09 22 2004
through

09 29 2004

5. (a) Date of Public Distribution(s)

09 30 2004

(b) Communication Title Never Forget

6. Is the Filer a Qualified Nonprofit Corporation under 11 CFR 114.107

Yes X

No

7. Were the disbursements for the electioneering communication made exclusively from donations to a segregated bank account?

Yes X

No

8. Custodian of Records

(a) Name

Weymouth D. Symmes

(b) Address (number and street)

P.O. Box 26184

(c) City, State and ZIP Code

Alexandria VA 22314

(d) Name of Employer or Principal Place of Business

Retired

(e) Occupation

Retired

9. Total Donations This Statement

1,581,100.00

10. Total Disbursements/Obligations This Statement

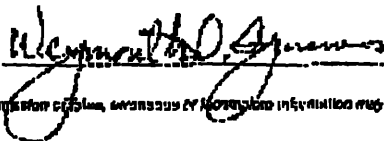
1,382,152.60

Under penalty of perjury, I certify that this statement is true, correct and complete. In addition, if the electioneering communications reported herein were made by a corporation, I certify that the corporation is a qualified nonprofit corporation under the Commission's regulations.

TYPE OR PRINT NAME OF PERSON COMPLETING FORM

Weymouth D. Symmes

SIGNATURE



DATE

9/30/04

NOTE: Submission of false, misleading or incomplete information may subject the filer to the penalties of 18 U.S.C. 1001.

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FEC FORM 9

24 HOUR NOTICE OF DISBURSEMENTS/OBLIGATIONS FOR
ELECTIONEERING COMMUNICATIONS

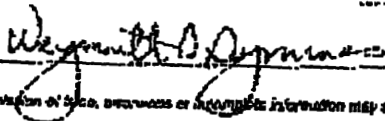
1. Individual, Organization or Qualified Nonprofit Corporation Making the Disbursement/Obligations		2. FEC Identification Number	
(a) Name Swift Boat Vets and POWs for Truth		C	
(b) Address (number and street) <input type="checkbox"/> check if different than previously reported P.O. Box 26184			
(c) City, State and ZIP Code Alexandria VA 22313			
(d) Name of Employer or Principal Place of Business		(e) Occupation	
3. Is This Statement	<input checked="" type="checkbox"/> New or <input type="checkbox"/> Amended	4. Covering Period	0 9 2 9 2 0 0 4 through 0 9 3 0 2 0 0 4
5. (a) Date of Public Distribution(s) 1 0 0 1 2 0 0 4		(b) Communication Title Character	
6. Is the Filer a Qualified Nonprofit Corporation under 11 CFR 114.10?		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
7. Were the disbursements for the electioneering communication made exclusively from donations to a segregated bank account?		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
8. Custodian of Records			
(a) Name Weymouth D. Symmes			
(b) Address (number and street) P.O. Box 26184			
(c) City, State and ZIP Code Alexandria VA 22313			
(d) Name of Employer or Principal Place of Business Retired		(e) Occupation Retired	
9. Total Donations This Statement 2,004,400.00			
10. Total Disbursements/Obligations This Statement 78,204.38			

Under penalty of perjury, I certify that this statement is true, correct and complete. In addition, if the electioneering communications reported herein were made by a corporation, I certify that the corporation is a qualified nonprofit corporation under the Commission's regulations.

TYPE OR PRINT NAME OF PERSON COMPLETING FORM

Weymouth D. Symmes

SIGNATURE



DATE 10/1/04

NOTE: Submission of false, inaccurate or incomplete information may subject the person completing this statement to the penalties of 18 U.S.C. § 437g.